IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 34311 of 2005(I)

OS.71/2001 of PRL.M.C.KOZHIKODE-I
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PETITIONER:

PEECHANGALI RAGHAVAN, S/O. KANNAN,
AGED 74 YEARS, MAKKADA AMSOM,DESOM,KOZHIKODE TALUK

BY ADV. SRI.P.S.SREEDHARAN PILLAI
SRI.K.B.SAJEESH
SRI.P.GOPINATH
SRI.C.S.SUNIL
SMT.C.G.PREETHA
SRI.M.PRAVEESH

RESPONDENTS:
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1. KAMBRAKUNNUMMAL VIVEKANANDAN,
MAKKADA AMSOM, DESOM, KOZHIKODE TALUK.

2. KAMBRAKUNNUMMAL PRASANA, D/O. RAMAN,
MAKKADA AMSOM, DESOM, KOZHIKODE TALUK.

3. PRAKASAN, S/O. PARANGODAN,
RESIDING AT VILLERITHAZHAM, MAKKADA AMSOM, DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.SUNNY MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 34311/2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PLAINT IN O.S. NO. 71/2001 DATED 30.1.2001 FILED BEFORE THE PRINCIPAL MUNSIFF'S COURT 1, KOZHIKODE BY THE PETITIOENR HEREIN.

EXT.P2: COPY OF THE COMMISSION REPORT IN O.S. NO. 71/2001 DATED NIL 9.2002 FILED BEFORE THE PRINCIPAL MUNSIFF'S COURT 1, KOZHIKODE BY ADV. COMMISSIONER MR. VINAYANANDAN C. ADVOCATE.

EXT.P3: COPY OF THE I.A. NO. 3511/2005 IN O.S. NO. 71/2001 FILED BY THE PETITIONER BEFORE THE PRINCIPAL MUNSIFF'S COURT – 1, KOZHIKODE TO RE IT THE REPORT TO ADVOCATE COMMISSIONER DATED 2.9.2005

EXT.P4: COPY OF THE COMMON ORDER DATED 29.10.2005 PASED IN I.A. NO. 3510/2005 AND I.A. NO. 3511/2005 IN O.S. NO. 71/2001 ON THE FILES OF THE PRINCIPAL MUNSIFF'S COURT – 1, KOZHIKODE.

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 34311 of 2005

Dated this the 5th day of June, 2007

JUDGMENT

Ext.P4 passed by the learned Munsiff on an application submitted by the plaintiff for remitting the commission report back to the Commissioner is under challenge on the ground that the re-survey number shown in the report is not correct and that the boundaries shown by the Advocate Commissioner are not correct. The petitioner does not say in the affidavit as to what are the correct resurvey number of the property and as to what are the correct boundaries of the property which ought to have been shown by the Commissioner. The counsel for the petitioner submits that the petitioner has shown the correct resurvey number of the property as well as actual boundaries of the property in the plaint schedule. In view of this, the court below should not have blamed the petitioner for not having stated the very same details in the affidavit in support of the application, submits counsel.

2. I find some force in the above submission of the

learned counsel for the petitioner. But at the same time, I am of the view that it is not necessary to interfere with Ext.P4 in this jurisdiction under Article 227 because I notice that the interest of the petitioner has been taken care of by the learned Munsiff in his order. The learned Munsiff has given the liberty of cross examining the Advocate commissioner at the time of trial. The petitioner can cross examine the Commissioner on all matters which are relevant according to the petitioner for resolving the issues in the suit and if the evidence of the Advocate commissioner convinces the court that there is warrant for remitting the report over to the Commissioner again, confirmation of Ext.P4 by this court will not stand in the way of directing the Commissioner to conduct a further inspection at that stage.

The writ petition is disposed of as above. No costs.

PIUS C. KURIAKOSE,

JUDGE.

dpk